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FISCAL IMPACT STATEMENT

LS 6189

BILL NUMBER: HB 1358

NOTE PREPARED: Nov 14, 2002

BILL AMENDED:

SUBJECT: Community Policing Volunteers.

FIRST AUTHOR: Rep. Smith V

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

(A) It defines "community policing volunteer" as a person who is actively participating in a plan, system, or strategy: (1) established by and conducted under the authority of a law enforcement agency; and (2) in which citizens work with members of the law enforcement agency to reduce or prevent crime within a defined geographic area.

(B) It increases the penalties for battery and intimidation if the victim is a community policing volunteer.

(C) It makes the fact that a murder victim was a community policing volunteer an aggravating circumstance when determining whether to impose a sentence of life imprisonment without parole or death on the person convicted of committing the murder.

Effective Date: July 1, 2003.

Explanation of State Expenditures: *Provision A:* Community policing volunteers are part of community policing initiatives developed in the early 1990's to improve the relationships between police departments and community residents. Currently, there are active programs in Gary, South Bend, Fort Wayne, Indianapolis, and Elkhart. (Note: The number of communities with community policing volunteer programs will be updated when additional information is available.)

Provision B: If a Class A misdemeanor is enhanced to be a Class D felony, state expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. A Class D felony is punishable by a prison term ranging between six months to three years or reduction to Class A misdemeanor. The period of incarceration will depend upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$25,087 in FY 2001. Individual facility expenditures ranged from \$18,520 to

\$54,465. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost per offender for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Provision C: Adding the murder of a community policing volunteer as an aggravating circumstance could increase the involvement of the Office of Attorney General and the State Public Defender's Office if more death penalty cases are filed because of this bill. More death penalty cases could increase requests for reimbursements to counties from the Public Defense Fund, which reimburses counties 50% for the cost of defending indigent persons tried in capital cases.

Public Defense Fund expenditures for FY 1996 through FY 2002 for partially reimbursing counties for the costs of capital cases are provided in the following table.

| Fiscal Year | 1998 | 1999 | 2000 | 2001 | 2002 |
|----------------------------------|-----------|-----------|-----------|-----------|-----------|
| Reimbursements for Capital Cases | \$799,450 | \$526,512 | \$378,209 | \$712,055 | \$473,317 |

The Fund also partially reimburses counties for the costs of noncapital cases as provided in the following table.

| Fiscal Year | 1998 | 1999 | 2000 | 2001 | 2002 |
|--------------------------------------|-------------|-------------|-------------|-------------|-------------|
| Reimbursements for Non-Capital Cases | \$1,031,467 | \$2,188,699 | \$3,302,471 | \$3,669,318 | \$4,869,314 |

The Public Defense Fund receives \$2.4 M annually in transfers from the state General Fund generated from court fees, and it received an additional appropriation of \$4.6 M for FY 2003.

Explanation of State Revenues: *Provision B:* More revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court. The maximum fine for a Class B misdemeanor is \$1,000, the fee for a Class A misdemeanor is \$5,000, while the maximum fine for a Class D felony is \$10,000. Court fees for both misdemeanors and felonies are \$120.

Explanation of Local Expenditures: *Provision B:* For cases involving simple battery, increasing a misdemeanor from a Class B to a Class A could increase the amount of time that an offender spends in jail. The maximum sentence for a Class B misdemeanor is 180 days in jail, while the maximum sentence for a Class A misdemeanor is 360 days. As proposed for cases involving either intimidation or battery causing bodily injury, the costs to the county may be reduced if an offender is sentenced to state prison rather than to a county jail. If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. The maximum term of imprisonment for a Class A misdemeanor is up to one year. The average daily cost to incarcerate a prisoner in a county jail is roughly \$44.

Provision C would allow the prosecuting attorney of a county to request either life without parole or the death penalty against a person who murders a community policing volunteer. Under current law, the prosecuting attorney would not be able to request either the death penalty or life without parole unless one of 16 aggravating circumstances under IC 35-50-2-9 could be cited when a murder occurred.

Background Information: Of the three possible sentencing options for murder, the death penalty is generally the most expensive for trial courts to conduct because two attorneys are required to represent the accused, and a bifurcated trial is conducted to determine guilt or innocence and whether a sentence of death is warranted. Life without parole is the next most expensive option because, while two attorneys are not required for legal representation, a bifurcated trial is also required to determine guilt or innocence and then whether a sentence of life without parole is warranted. Determinate sentencing of between 45 and 65 years is the least expensive option because one trial is conducted and two attorneys are not required to represent the defendant.

The following table summarizes the difference between these three options:

| <u>Sentencing Option</u> | <u>Number of Defense Attorneys Needed</u> | <u>Type of Trial Conducted</u> |
|--|--|---|
| Death Penalty | Two | Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate. |
| Life Without Parole | One | Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate. |
| Determinate Sentence Between 45 and 65 Years | One | A single trial to determine guilt or innocence; a sentencing hearing is separate. |

Consequently, the costs of legal representation for a case where the most serious sentence is between 45 and 65 years would likely be lower than the costs of a case involving life without parole.

No information is available on the costs of murder cases in which the most serious sentence was between 45 and 65 years of incarceration. However, at the request of the Criminal Law Study Commission, Legislative Services Agency staff compared the costs of death penalty cases and cases in which life without parole was the most serious outcome that could occur. The following table displays the cost components for a “typical” death penalty trial and a trial where life without parole is the most serious sentence.

| Cost Components for Murder Trials: | | |
|--|-----------------------------|-----------------------------------|
| | <u>Death Penalty</u> | <u>Life Without Parole</u> |
| Attorneys and Related Costs* | \$107,804 | \$27,370 |
| Jury and Related Costs | \$46,375 | \$10,150 |
| Cost of Appeals | \$54,355 | \$5,466 |
| Prosecuting Attorney | \$2,340 | \$2,948 |
| County Sheriff | \$8,472 | \$4,380 |
| Total Costs | \$219,346 | \$50,314 |
| *Net Costs After Reimbursement From Public Defense Fund | | |

The cost of legal representation for a criminal defendant in a death penalty case is four times as expensive as the costs of a criminal trial in which the most serious sentence is life without parole. The costs of a trial where a determinate sentence is the most serious sentence is likely to be less than the costs of a trial in which life without parole is the most serious sentence.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction, Office of the Attorney General, Office of the State Public Defender, State Police.

Local Agencies Affected: Trial Courts, County Sheriff.

Information Sources: Indiana Supreme Court; *The Application of Indiana's Capital Sentencing Law, Findings of the Indiana Criminal Law Study Commission* (January 10, 2002); Website of Clark County (IN) Prosecuting Attorney, <http://www.clarkprosecutor.org/html/death/>

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